

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **200921003**

Release Date: 5/22/2009

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Index Number: 9100.00-00, 565.00-00

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B02

PLR-135061-08

Date:

February 06, 2009

TY:

LEGEND

Taxpayer	=
A	=
B	=
M	=
X	=
Y	=
Date1	=

Dear :

This letter is in response to a ruling request dated , submitted on behalf of Taxpayer requesting an extension of time for making a consent dividend election under § 565 of the Internal Revenue Code. This request is made pursuant to Treasury Regulation §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

FACTS

X is a corporation organized and existing under the state of M. X's stock is widely held and traded on a public exchange. X is a common parent of an affiliated group of corporations that file a consolidated federal tax return on an annual basis under the accrual method. X has over subsidiaries that provide diversified . X's Tax Department currently has a compliance staff of approximately individuals who prepare and review tax returns.

X purchased Y and its subsidiary entities, including Taxpayer, on Date1. X has an established practice of extending almost all of its federal income returns. Prior to the original due date of the first return to be filed by X's Tax Department for Y's entities, A, a

member of X's Tax Department, was under the impression that the extension (Form 7004) for Taxpayer, a REIT owned by Y, was going to be filed by B, a Tax Department member who was responsible for filing the acquisition information for Y. At the same time, B, was under the impression that A would file Taxpayer's extension because A files extensions for X's other REITs. As a result of this misunderstanding, the extension of time to file Taxpayer's federal return for tax year ended _____, was not filed by X for Taxpayer. Taxpayer represents that the failure to file for an extension of time in a timely manner was due to miscommunication between employees of X's Tax Department. Upon discovering the oversight, X filed its request for relief, before the Service discovered Taxpayer's failure to file an extension and make the consent dividend election.

LAW AND ANALYSIS

Section 565(a) provides that if any person owns consent stock (as defined in section 565(f)(1)) in a corporation on the last day of the taxable year of such corporation, and such person agrees, in a consent filed with the return of such corporation in accordance with the regulations, to treat as a dividend the amount specified in such consent, the amount so specified shall, except as provided in 565(b), constitute a consent dividend for purposes of 561 (relating to the deduction for dividends paid).

Section 1.565-1(a) provides that the dividends paid deduction, as defined in 561, includes the consent dividends for the taxable year. A consent dividend is a hypothetical distribution (as distinguished from an actual distribution) made by certain corporations to any person who owns consent stock on the last day of the taxable year of such corporation and who agrees to treat the hypothetical distribution as an actual dividend, subject to specified limitations, by filing a consent at the time and in the manner specified in 1.565-1(b). Section 1.565-1(b)(3) provides that a consent may be filed not later than the due date of the corporation's income tax return for the taxable year for which the dividends paid deduction is claimed. Under Rev. Rul. 78-296, 1978-2 C.B. 183, the due date for purposes of section 1.565-1(b)(3) includes the extended due date of a return filed pursuant to an extension of the time to file.

Section 301.9100-1(c) provides that the Commissioner of Internal Revenue, in exercising his discretion, may grant a reasonable extension of time under the rules set forth in 301.9100-3 to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. The term "regulatory election" is defined in 301.9100-1(b) as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Under Section 301.9100-3(b)(1)(i), except as provided in paragraphs (b)(3)(i) through (iii) of this section, a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service.

Paragraphs (b)(3)(i) through (iii) of 301.9100-3 provide that a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer:

- (i) seeks to alter a return position for which an accuracy-related penalty could be imposed under 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested;

- (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or

- (iii) uses hindsight in requesting relief. If specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief. In such a case, the Service will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

Section 301.9100-3(c)(1) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made. The interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made, or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment.

CONCLUSION

Based upon our analysis of the facts, Taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government, and therefore the requirements of sections 301.9100-1 and 301.9100-3 have been met.

Under the facts represented, Taxpayer's tardiness in filing the consent dividend election was not due to the intentional disregard of the tax rules, but was an inadvertent error on the part of Taxpayer's tax professionals. Taxpayer did not affirmatively choose not to file the election. Taxpayer is not seeking to alter a return position or to use hindsight to request relief. Finally, Taxpayer acted promptly in filing its request for relief, before the IRS discovered the failure to make a regulatory election. Therefore, Taxpayer did not act unreasonably or in bad faith.

Furthermore, granting relief will not result in Taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than Taxpayer would have had if the election had been timely made, nor will any closed years be affected. Therefore, the interests of the government will not be prejudiced by granting the request for relief.

Because Taxpayer acted reasonably and in good faith, and because the interests of the government will not be prejudiced if the request for relief is granted, Taxpayer is granted an extension of 45 days from the date of this ruling to file their consent dividend elections. A copy of this letter should be attached to the amended returns filed reflecting the elections.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Thomas D. Moffitt
THOMAS D. MOFFITT
Chief, Branch 2
(Income Tax & Accounting)

cc: